THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.19018 of 2005

Date:03.08.2007

Between:

R.Prasad

.. PETITIONER

AND

The A.P. Housing Board and another.

..RESPONDENTS

ORDER:

The petitioner was allotted a flat bearing No.B6/F11 of HIG-II category in Phase-II of Baghlingampally in the year 1985. Thereafter, the possession was delivered and a sale deed was executed after receiving a consideration of Rs.1,36,500/-. Stating that the final cost of the flat is yet to be decided, in view of the pendency of certain claims as regards cost of the land and construction, a sum of Rs.13,750/- was collected towards tentative difference of cost, in the year 1996 itself. The amount was kept in fixed deposit in the joint account of the petitioner and the respondents. For the initial spell of three years, the petitioner was paid the accrued interest. The amount was reinvested in F.D.R. However, when it was matured for the second time, the respondents kept the principal of Rs.13,750/- as well as accrued interest in A.P. Housing Board Working Fund Collection and that the petitioner is not being paid the interest on the amount. This writ

petition is filed with a prayer to direct the respondents to refund the amount deposited by him with accrued interest.

On behalf of the respondents, a counter-affidavit is filed. It is stated that the final cost of the flat has not been determined as yet and the amount of Rs.13,750/- has been taken as deposit to meet the tentative escalation of cost. According to the respondents, the final cost is yet to be fixed and the amount deposited by the petitioner is held to meet the escalation in the cost.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

The flat was registered in favour of the petitioner in the year 1996. More than eleven years had elapsed. The final cost has not been fixed, as yet. On a requisition made by the respondents, the petitioner deposited a sum of Rs.13,750/- in a joint account. After the F.D.R. has matured, the petitioner was paid the interest. However, subsequently, the interest is denied to the petitioner.

The very basis for requiring the petitioner to make a deposit of Rs.13,750/- was that the obligation of the petitioner to pay the difference of the cost, can be met with that amount. Since the final cost was not arrived at by the time the F.D.R. had matured, the petitioner was paid the accrued interest and the principal amount was reinvested. To that extent, the petitioner did not have any grievance. However, without any intimation to the petitioner, the respondents have invested the amount in a different manner.

The payment of interest was stopped. Such a course could have been adopted by the respondents, if only the amount deposited by the petitioner would be sufficient to meet the probable escalation. On the other hand, if the respondents are of the view that the petitioner would be liable to pay the amount of escalation, if it exceeds the deposited amount, they ought to have extended the benefit of interest to the petitioner. They cannot have both the ways.

For the foregoing reasons, the writ petition is disposed of, directing that:

(a) in case, the respondents intend to recover any amount towards escalation of cost from the petitioner over and above what was deposited, they shall be under obligation to pay the amount that had accrued upon the deposited amount of Rs.13,750/- from time to time. The steps in this regard shall be taken within a period of two months from the date of receipt of a copy of this order; and

(b) if the respondents do not pay the interest, the said amount shall be treated as the payment towards final cost irrespective of its extent and they shall not be entitled to recover any further amount from the petitioner.

There shall be no order as to costs.

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03.08.2007

Note: Issue cc in one week.
(B/o)
kdl